

House of Lords

(sitting as a Committee)

25th July 1990

Debate on Clause 159 amending the Marine etc Broadcasting (Offences) Act 1967

Clause 159 [Amendments of the Marine, &c., Broadcasting (Offences) Act 1967]:

§ On Question, Whether Clause 159 shall stand part of the Bill?

§ Lord Monson

Clause 159 and its associated schedule, Schedule 14, were introduced into the Bill at a late stage in the other place. Honourable Members had little time to absorb or debate its full and alarming implications. It is an open secret that the purpose of Clause 159 is to smash Radio Caroline. This is a so-called pirate radio station which has been harmlessly operating for 26 years. The material it broadcasts may not be my cup of tea nor that of most Members of the Committee. However, it is perfectly innocuous and gives enormous pleasure to a large number of people in London and south-east England. They are mainly respectable, middle-aged people who tend to have listened to the station since it opened in the mid 1960s.

Clause 159 has alarming implications both for international law—in particular, maritime law—and for civil liberties. The powers which Her Majesty's Government are seeking against Radio Caroline, astonishingly, are very much greater than the powers which they have, in the past, sought and obtained against hijackers, smugglers and drug traffickers. I am not qualified to talk about the implications for maritime law or the extra-territorial implications. However, my noble and learned friend Lord Wilberforce, with his enormous legal experience, is extremely unhappy about the clause and about Schedule 14. He would have been here this evening to support a number of these amendments were it not for a long-standing prior engagement.

Apart from the legal international implications, the practical international implications are also extremely alarming. For example, let us suppose that an Albanian ship were to be boarded by elements of our armed forces or police. Albania has ruined already the medium-wave reception of what I still think of as the Third Programme, but that is perhaps incidental. More realistically, let us suppose that a Chinese, Iranian or Iraqi ship were to be boarded. The consequences do not bear thinking about.

Therefore, this is a worrying clause and the implications of the schedule are equally worrying when examined in detail. I look forward to hearing the comments of other Members of the Committee on this clause.

§ Lord Annan

These proposals which are brought forward for deliberation are so extraordinary that learned counsel said about them: the proposed new powers are draconian and unprecedented in their extra-territorial effect ... they offend against international comity in particular by their generalised assault on the principle of territoriality and create a most dangerous precedent for interference by foreign states with the legitimate rights of British shipping". The conventional way of dealing with an unauthorised broadcast from a foreign registered ship

on the high seas would be for the British Government to make the appropriate representation through diplomatic channels to the flag state of the vessel. In the past it is noteworthy that Parliament has stopped short of giving extra-territorial effect to statutes designed to prevent offences committed on foreign flag ships and which must, on any view, be categorised as far more serious; for example, smuggling or drug trafficking.

Section 7A goes far beyond any other statute such as the [Drug Trafficking Offences Act 1986](#) in infringing the principle of extra-territoriality. However, there is much more to it than that. Section 7A empowers servants of the Crown to seize property and detain persons, to require the crew to produce documents and—this is most extraordinary and reprehensible—to grant officials immunity who are engaged in search and seizure.

What is so surprising about the proposed powers of search and seizure is that in contrast to other statutes conferring similar powers, they are given to such a wide category of persons. There must be some question as to whether it is necessary to extend the powers beyond police and customs officers. It is certainly unclear why there is any necessity for the catch-all Section 7A(1)(a) which states: persons authorised by the Secretary of State to exercise the powers conferred by subsection (5). That could mean anyone at all. It could mean the enforcement agencies of other foreign states being pressed into service.

The immunity clause is iniquitous. If I come home, find a burglar in the house, pick up a poker and bash his brains in, I shall be guilty of manslaughter. The noble Earl will remember the recent case of an assault on the Tube in London, where a wretched victim who was assaulted by a gang of thugs was badly beaten about the head and body; nevertheless, in self-defence he drew a swordstick and managed to pink one of the thugs. He was arrested for carrying a weapon illegally, although that weapon may have saved his life. He was found guilty of a criminal offence. I do not know what happened to the thugs and perhaps the noble Earl can tell us.

I want to apply that case to what could happen on a vessel boarded in the way now to be permitted under this section. A member of the crew resists and is knocked overboard into the water and drowns. His family will have no case in damages; there will be no case of manslaughter brought against the officer who did this. It is a licence for official thuggery.

The noble Earl will be aware that I am not soft on terrorism. I applauded the storming of the Iranian Embassy by the SAS and what the SAS did to those terrorists who occupied that Embassy. I rejoiced when I heard that the terrorists in Gibraltar were shot dead like rats. But broadcasters are not terrorists. What is Radio Caroline but a lot of crickets chirping in the grate?

I do not pretend to be an expert on international law. However I did look up O'Connell, Vol. I, page 654. There it states: No State may assume, without the consent of the offender's State or the flag state, jurisdiction over aliens with respect to criminal acts on board foreign ships on the high seas". As I understand it, the 1958 Geneva Convention is still in force. It gives no legal justification for boarding private radio ships and arresting their crews.

When I raised this point at Second Reading the noble Earl said: The provisions in the Bill are in accordance with international law. The United Nations Law of the Sea Convention allows states to act against ships on the high seas of any nationality, or none, if broadcasts from them can be received on their territory or cause interference".—[[Official Report, 5/6/90; col. 1355.](#)] I wonder whether the noble Lord was then referring to the 1982 United Nations Convention on the Law of the Sea. He may have had in mind Articles 109 and 110 of that convention, but those provisions are not yet law. Indeed the United Kingdom is not one of

the 41 states which have ratified that convention. On what grounds therefore do the Government assert that this schedule is already in accordance with international law?

I shall not bore the Committee with the five cases since the Geneva convention on boarding illegal broadcasting ships. I shall certainly spare the Committee those details. But it is clear that nowhere in the 1958 Geneva convention, on which international law is based, is the power given or measures included which would entitle states to board such vessels on the high seas.

The noble Lord, Lord Monson, referred to the noble and learned Lord, Lord Wilberforce. In Germany in 1945 General Horrocks, who was commanding 30 Corps, gave an order, which appeared in corps orders, that if any German youths were found mocking, interfering or sneering at any members of the British Army, they were to be taken summarily to the guard room and there given six of the best. Mr. Wilberforce, as he then was, and who was head of the legal division in Berlin in the British Control Commission, thereupon sent a rasping order down to 30 Corps, instructing the corps commander to withdraw the order at once. We had come to Germany to imbue that country with respect for the rule of law and that was no way to do it.

The noble Earl knows well that I am not much given to indignation or impassioned denunciations of Government policy. "Mr. Milquetoast" is really my middle name! I know that Radio Caroline is an irritant. I know that it is illegal; but is it not beneath the dignity of Her Majesty's Government to make such a proposal? That is high-handed and bullying. It reminds one of other instances in which the Government use power when those it is used against have no power to resist it. Homosexuals and disc jockeys are not likely to make much of a comeback.

What was the result of Clause 28, which was a totally unnecessary and ham-handed measure? I well remember the noble Lord, Lord Boyd-Carpenter, in his most assured manner telling the Chamber that, of course, it would never be employed against genuine artistic products such as "The Importance of Being Earnest". What happened? Kent County Council banned Benjamin Brittan's opera "Death in Venice".

I have a feeling that the Government will regret passing a measure of this kind. They are trying to bring down a mosquito with artillery fire. I know also that they are trying to bring it down by illegal means. There is no point in asking the noble Earl to reconsider this matter but I ask him to believe that I am not pleading for an illegal radio station. Like the noble Lord, Lord Monson, from the voluminous mail I receive I am in no doubt that there are many people who listen to and enjoy that radio station. No doubt it is popular, but that is not my purpose. My purpose is to bring home to the Government and to the public that the Government are about to pass a clause which is illegal in international law and an affront to those who care about the principles of justice.

I only hope that if this clause becomes law the crew of Radio Caroline will seek to obtain a craft under the flag of the United States. If they do that and the Government board and sequester that vessel, the Government will find themselves faced with the prospect of war, as in 1812, and later having to pay an indemnity, just as they did in the case of the "Alabama" in the American civil war.

§ Lord McIntosh of Haringey

The noble Lord, Lord Monson, is right to raise this serious question by seeking to cast in doubt the whole of Clause 159; not that Clause 159 says anything; it is all said in Schedule 14.

The law about the control of radio stations of this kind is already comprehensive. The 1967 Act, which is to be amended by Schedule 14, prohibits any unauthorised broadcasts in UK external waters. It prohibits broadcasts by UK registered ships. It prohibits broadcasts by UK nationals. It prohibits acts facilitating broadcasts. It prohibits advertising or the supply of records for the purpose of broadcasting. It provides penalties against anybody who infringes any of those provisions. Indeed, it provides for search by police officers, although certainly not with the use of force or the use of officers authorised by the Secretary of State. That Act is perfectly in accordance with international convention.

The European convention on broadcasts of this kind is satisfied by the 1967 Act. In order to fulfil our international obligations there is no need for us to go any further. What is now proposed goes very much further, as Members of the Committee have already said. It breaches the fundamental principle of territoriality. It breaches the principle that no state can pass a law which creates an offence carried on outside its own jurisdiction—in other words, on the high seas and even outside its external waters—by citizens other than its own.

There are exceptions to the principle of territoriality. The [Hijacking Act 1971](#) and the [Suppression of Terrorism Act 1978](#) both provide for breaches of the rule on territoriality. There have been international agreements that have recognised that, in certain extreme circumstances such as hijacking and the prevention of terrorism, it is necessary to breach the rule of territoriality. With other offences such as drug trafficking where we have the [Drug Trafficking Offences Act 1986](#), we have not thought to breach territoriality. Why are we seeking to breach it now in the case of Radio Caroline?

We are proposing that not just our police but any person authorised by the Secretary of State shall have the right to go outside our own territory, board, and if necessary, use force against the crew of a vessel flying a foreign flag in order to prevent not merely interference by a broadcasting station but the reception of that station by the citizens of this country. I suggest to the Minister that if he insists on keeping Clause 159 in the Bill—I do not think that the noble Lord, Lord Monson, would be wise to pursue his Motion against clause stand part—at the very least he should pay serious attention to the first amendment in the name of the noble Lord, Lord Monson, and replace it with one which provides that an offence shall only be created if there is interference with airwaves rather than simply with reception. The arguments have been very well put and we are coming close to the time when we should not be considering these matters any further. However, it is necessary to complete the argument and to give the Minister a chance to reply.

S Viscount Caldecote

I have no wish to discomfit my noble friend on the Front Bench, but this is really taking a steam-hammer to crack a nut. Radio Caroline may be annoying, but this issue is not of such moment as to require the draconian measures that are being proposed. When a steam-hammer is used irresponsibly it can do a lot of damage by mistake. This is a very good example. This clause sets a very bad example to others on the high seas. For example, someone like Colonel Gadaffi might well find passing near but outside his territorial waters a ship which he does not approve of for some reason. He could use this as an excuse to board it and commit piracy on the high seas, which this measure is legalising.

In the past, piracy on the high seas has always been a heinous crime against which the masters of ships have been protected by the strongest laws. It is very bad to give this example which others might take advantage of for piracy on the high seas. Other reasons have been given, such as the view that broadcasting from Radio Caroline interferes with distress signals on the high seas. The fact is that the frequency used is well away from any of the distress frequencies used on the high seas and that argument cannot be sustained.

I understand that Spectrum Radio in the United Kingdom was allocated the same frequency as Radio Caroline. There was interference and very soon another frequency was found. The fact that there are not enough frequencies available appears to be a somewhat spurious argument. That is not to say that we condone illegal broadcasting and pirate broadcasting of this kind. Therefore, I shall not support the Motion put forward by the noble Lord, Lord Monson, to delete Clause 159. That would indicate that we do not want to take any action against pirate radio. I urge and implore Her Majesty's Government to withdraw this clause and to look at it again very carefully. I hope that they will give an undertaking to look at it and to bring back some better way of dealing with Radio Caroline than this draconian measure.

§ 11 p.m.

Earl Ferrers

We are talking here about pirate radio stations. Offshore broadcasters have a colourful and romantic image. They are popularly known as pirates, conjuring up images of swashbuckling characters wearing black hats and scarves, out to tweak the tail of the authorities. They are seen by their supporters, as we have heard this evening, as harmless providers of a type of broadcasting which is not available elsewhere. On that view, the authorities who try to enforce the law against them are seen, as my noble friend Lord Caldecote said, as the sledgehammer to crack a nut, or, as the noble Lord, Lord Annan, said earlier on, bureaucratic killjoys out to break butterflies on wheels.

The noble Lord, Lord Monson, said that what pirate stations do is innocuous. I totally disagree. I do not think that it is innocuous. The reality is quite different. The radio spectrum is a valuable natural resource. Its use has to be carefully planned and regulated, especially with the explosive growth in the use of radio for communications and for broadcasting. The noble Lord, Lord Annan, said that this provision will offend against international comity. I say to the noble Lord that pirate radio stations offend against and infringe the law of the country. Why do they position themselves just outside territorial waters and use British frequencies if it is not to avoid British law?

Unauthorised transmissions, because of their unplanned nature, are damaging to authorised broadcasters and other radio users. Even the safety-of-life services can be affected. That is not fanciful. Offshore broadcasters have used a frequency very close to, and capable of interfering with, a channel used for ship-to-shore communications and have threatened aeronautical radio navigation beacons upon which helicopters rely. The consequences in such cases are potentially extremely serious. Interference in a complicated phenomenon and radio use needs careful planning in order to minimise the risks while making maximum effective use of the spectrum available. For example, two transmissions can combine to interfere with a third even though neither of the first two individually causes interference.

There is no longer any justification for the pirates to claim that they have been driven offshore because they are being excluded by the "establishment" and have no alternative. Our policy is to cater for the widest possible range of tastes, and this is already being put into effect through the licensing of the first batch of community radio stations. It is open to anyone to apply for a broadcasting franchise and licence under the new system; and, as long as he has not been convicted of an unauthorised broadcasting offence since 1st January 1989, he stands an excellent chance. Some erstwhile pirates have taken this path. The circumstances that gave rise to pirate radio in the 1960s no longer exist.

I am not too good at remembering songs, stories and sea shanties but I do remember one. It was about Captain Kidd. It went something like this: My name is Captain Kidd, as I sail, as I sail". It ended: To the execution block, I must go, I must go". I wonder whether pirate radio

stations might not feel the same. By grabbing frequencies and interfering with legitimate broadcasts, pirate stations restrict choice. They do not extend it. They also have an unfair commercial advantage since they do not pay licence or performance fees. I find it astonishing that a good many Members of the Committee seek to defend the operation of some broadcasters who, however popular they may be, are broadcasting against the law, against the interests of other broadcasters and sometimes at the risk of safety-of-life services.

The noble Lord, Lord Annan, and others complained about Schedule 14 being incompatible with the law and being excessive. All states have a duty to co-operate in the suppression of unauthorised broadcasting from the high seas. Such broadcasting contravenes worldwide independent telecommunication union radio regulations. The Government are satisfied that the exercise of the powers provided for in the Bill relating to ships on the high seas will be in accordance with international law.

As the noble Lord, Lord Annan, rightly said, the powers we are taking are modelled on Articles 109 and 110 of the United Nations Convention on the Law of Sea. These provide for a state to take action against broadcasters on ships of any nationality or of none which are on the high seas, if their broadcasts, which are contrary to international regulations, can either be received in that state's territory or cause interference there. We do not anticipate objection from other states, although we will normally consult the flag state.

The noble Lord, Lord Annan, said that that convention had not been ratified. It is true that Her Majesty's Government have not yet acceded to the Convention on the Law of the Sea. I have explained the justification for the schedule in international law. Our view is that the exercise of the powers will be in accordance with international law. That is not dependent on the convention. The convention is a model for the provision. This is the basis in international law for paragraph 2 of the schedule. Paragraph 1, which deals with broadcasts from structures on the UK's area of the continental shelf, is based on states' well-established jurisdiction over their adjacent continental shelf.

The noble Lord, Lord Monson, said that the powers were excessive in comparison with those used against drug smuggling and other serious crimes. This is an important matter. Comparisons with the enforcement powers used against drug smuggling and other serious offences are oversimplified. The powers given to fight an offence are not a good reflection of its seriousness. The severity of the sentence is a far better indicator of the view taken by society of a crime. The penalties for drug smuggling far outweigh those for offshore broadcasting, and rightly so.

S Lord McIntosh of Haringey

I hesitate to interrupt at this hour. Surely the point about drug smuggling is that greater powers are needed in order to catch drug smugglers, whereas pirate radio ships are just sitting there waiting to be caught if the law is extended to penalise them.

Earl Ferrers

The noble Lord is always a little hasty in getting to his feet. If he had waited a little longer, I could have told him that the powers against drug traffickers onshore are far greater than those which we propose to use against pirate stations outside territorial waters. Enforcement powers have to reflect other factors. They have to be sufficient to enable the authorities to prevent the criminal activity in question, to obtain the evidence for a conviction and to bring offenders to book. A law which cannot be enforced will not be effective. The powers against

offshore broadcasting reflect these practical points. It will be necessary to board vessels, search them and to bring them into port and arrest persons from time to time.

§ Viscount Caldecote

Before the noble Earl sits down, will he comment on the point I made about the bad example that this provision will set to governments who are less responsible than Her Majesty's Government?

Earl Ferrers

I do not see that there is any connection. This measure permits a state to take action against people on the high seas whose frequencies affect the frequencies of that state, when an action is being taken against the international convention.

§ Lord Annan

Before the noble Earl sits down, I hope that he will deal with one further point which concerns immunity. I referred to immunity, but I do not think that the noble Earl has dealt with it. I wish to emphasise that I am not holding a brief for Radio Caroline.

Earl Ferrers

I am conscious of the fact that it is after the witching hour of 11 o'clock. I hope that I may write to the noble Lord on that point.

§ Lord Monson

I wish to reply, if I may. I am grateful to the noble Viscount, Lord Caldecote, for his powerful support and to the noble Lord, Lord McIntosh. I am particularly grateful to the noble Lord, Lord Annan, for his powerful and detailed support. He made only one error, but it was a significant one. Radio Caroline is not illegal, because it is operated from a foreign vessel with a foreign crew in international waters. Her Majesty's Government have at present no jurisdiction over it. It would take more time than we are allowed to reply in detail to the noble Earl, Lord Ferrers, but he mentioned that the penalties against drug smugglers are greater than the penalties that are likely to be imposed on radio disc jockeys. I suppose that we must be thankful for small mercies. We are talking about overkill and about a wholly disproportionate reaction to a minor irritation, rather like sentencing someone to 14 years' imprisonment for parking on a double yellow line.

I suspect that, if I were to persist in my original intention of opposing the inclusion of Clause 159 in the Bill, I would inconvenience the Committee and, furthermore, would be accused of jumping the gun and not giving the Committee a chance to examine the full implications of Schedule 14, some of which have been touched upon by my noble friend in all their alarming detail. I do not intend to divide the Committee on whether the clause should stand part of the Bill, but my noble friend and I will reserve all our fire for Schedule 14 which, I trust, will be dealt with tomorrow. I withdraw my opposition.

§ Clause 159 agreed to.